No. 80-123

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

SIDNEY GLASER, Director of the Division of Taxation, Department of the Treasury of the State of New Jersey,
Cross Petitioner,

v.

JOHN SALORIO, ROBERT COE and JOHN D. McGARR, JR.,
Cross Respondents.

On Cross Petition for Writ of Certiorari to the Supreme Court of New Jersey

CROSS PETITIONER'S REPLY MEMORANDUM

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CROSS PETITIONER'S REPLY MEMORANDUM

I

Initially, it should be noted that the Brief in Opposition to the Petition for Writ of Certiorari does not even discuss the first question presented by the Cross Petition for Writ of Certiorari. Therefore, that part of the cross petition is in effect unopposed.

II

In urging that the court should not grant certiorari to consider the validity of the 1962 Accord between New Jersey and New York and its significance to this controversy, the cross respondents describe the State's reliance upon the agreement as an "afterthought". This characterization seriously distorts the importance attached to the Accord in the proceedings before the trial court. In point of fact, the reciprocal legislative and executive action by the States of New York and New Jersey was set forth at length in the cross petitioner's first brief on the merits filed with the trial court. Furthermore, the existence of that reciprocal arrangement played a central part in Point I of the original brief and it was discussed at length in Point III of the state's reply memorandum. In any event, regardless of the exact manner in which the issue was presented to the state courts, there can be no doubt that it was properly raised. Indeed, it was one of the trial court's alternate grounds of decision and it was also addressed by the Supreme Court of New Jersey although that court found the agreement to be invalid because not entered into in conformity with the Compact Clause. In short, the validity and significance of the 1962 Accord between New York and New Jersey was properly raised in the state courts and the agreement is central to the overall controversy.

III

In arguing that there was no agreement between New York and New Jersey, the cross respondents conveniently ignore the fact that the only court to have ruled on the issue, the state trial court, expressly found that there was an agreement:

> "In the 1962 Act and thereafter, these two sovereign states by compact, by arrangement, by agreement, by attitude and by legislation set up an arrangement whereby they agreed on a taxing method which would govern commuters. New York accepted the 1961 legislation and what developed later. It arranged for certain credits to be given residents of both New York and New Jersey. New York saw to it that its residents did not pay anything extra by virtue of their working in New Jersey. New Jersey took the same attitude." (Jurisdictional Statement, App B at 56).

Furthermore, there is substantial evidence in the record to support these findings of the state trial court. Although the agreement between the Governors is cavalierly described by cross respondents as a "press release", it is clear that it was understood by the two chief executives to be a solemn reciprocal undertaking. Indeed, it was expressly described by former Governor Rockefeller as ". . . our joint agreement on the administration and enforcement of the personal income tax laws of our respective states . . ." (Appendix to Cross Petitioner's brief filed with Supreme Court of New Jersey, at p. 46). Furthermore, this executive agreement was complemented by changes in the governing legislation and by administrative regulations adopted by the state's taxing authorities. (See the Cross Petition for Writ of Certiorari, at pp. 12-13.) Finally, there can be no serious dispute that these reciprocal undertakings have continued in effect up to the present day.

In short, there is an agreement between the two states, and its validity and significance must be confronted.

IV

In attempting to defend the Supreme Court of New Jersey's conclusion that the 1962 Accord between the two states is invalid because it did not receive the approval of Congress as required by the Compact Clause, the cross respondents engage in the same fallacious reasoning as the Supreme Court of New Jersey. They assume that the agreement must be binding upon New York, thereby precluding New York from terminating it, before it can have any relevance to a state's compliance with the Privileges and Immunities Clause of Article IV. They then read *United States Steel Corp.* v. *Multistate Tax Commission*, 434 U.S. 452 (1978) as requiring any agreement between two states which may not be unilaterally terminated by either state as requiring congressional approval pursuant to the Compact Clause. Since the 1962 Accord between New York and New Jersey did not receive congressional approval, the cross respondents conclude that it has no force or effect.

However, the initial assumption of this argument is simply wrong. The policies of interstate cooperation which the Privileges and Immunities Clause was designed to serve permit states to enter into agreements from which either is free to withdraw but which are binding upon the citizens of those states so long as they remain in effect; indeed, the agreement upheld in *United States Steel Corp.* v. *Multistate Tax Commission, supra,* is an example of just such an agreement. The recognition in *Austin* v. *New Hampshire,* 420 U.S. 656 (1975) that states may enter into reciprocal arrangements to coordinate their tax laws in no way suggests that such arrangements must be mutually binding or of indefinite duration to be compatible with the Privileges and Immunities Clause. To the contrary, the policy of reciprocity may be served equally well by a

temporary agreement from which either state is free to withdraw. Therefore, the Supreme Court of New Jersey was simply wrong when it concluded that the 1962 Accord between New York and New Jersey is unenforceable against the taxpayer cross respondents simply because New York may be free to withdraw unilaterally from the agreement. The grant of *certiorari* is therefore required to clarify this misconception of the relationship between the Compact Clause and the Privileges and Immunities Clause of Article IV.

Respectfully submitted,

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